

## SPECIAL COUNCIL MEETING

JUNE 18, 2014

The Special Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair, Jay Furfaro at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Wednesday, June 18, 2014 at 8:41 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum  
Honorable Gary L. Hooser  
Honorable Ross Kagawa  
Honorable Mel Rapozo  
Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro

Excused: Honorable Mason K. Chock, Sr.

### APPROVAL OF AGENDA.

Mr. Rapozo moved for approval of the agenda as circulated, seconded by Mr. Kagawa, and carried by a vote of 6:0:1 (*Mr. Chock was excused*).

### PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

There being no one to give public comment, the meeting proceeded as follows:

Chair Furfaro: Since there is only one (1) item, may I call the County Attorney up?

There being no objections, the rules were suspended.

IAN K. JUNG, Deputy County Attorney: Good morning, Council Chair, Members of the Council.

Chair Furfaro: Good morning.

Mr. Jung: Deputy County Attorney Ian Jung.

EXECUTIVE SESSION:

ES-735 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(e), the Office of the County Attorney requests an Executive Session with the Council, to provide the Council with a briefing on EEOC Charge Nos. 486-2013-00066, 486-2013-00345, 486-2013-00047, 486-2013-00343, 486-2013-00005, and 486-2013-00342 concerning the County of Kaua'i, Kaua'i Police Department, and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Furfaro: So there are six (6) Equal Employment Opportunity Commission (EEOC) charges that you have so noted by the case numbers?

Mr. Jung: That is correct, Chair.

Chair Furfaro: Okay. Mr. Hooser.

Mr. Hooser: I have a question for the County Attorney, if I may. If you could, in English, as much as you can for the public, I know we have to go into Executive Session to cover the details, but I think it is only right that the public would know the basic nature of what we are going to be discussing. EEOC is an acronym...so if you could just talk a little bit...I think we should do this actually for everyone and I understand your constraints, but I think the public deserves to know a little bit more than what they were just told.

Mr. Jung: Sure. We will take note of that to spell out the acronym for the next one. The acronym EEOC stands for Equal Employment Opportunity Commission. There is a process where if there are complaints made by certain employees, that the EEOC can conduct an investigation based on those complaints, and then make their determination on those complaints. So these all surround personnel matters involving the County and relevant departments.

Mr. Hooser: There are one (1), two (2), three (3) four (4), five (5), six (6) different numbers here. So are those six (6) different complaints?

Mr. Jung: Those are six (6) different charges that were filed with the EEOC.

Mr. Hooser: Are these filing of complaints regarding the Kaua'i Police Department?

Mr. Jung: That is correct.

Mr. Hooser: So these are complaints filed by the EE...say it again.

Mr. Jung: The EEOC. Equal Employment Opportunity Commission.

Mr. Hooser: And that is a federal office.

Mr. Jung: That is a federal agency that basically administers Title 7 of the Civil Rights Act of 1964, which deals with intaking and processing complaints. So it is like an intermediary federal agency that sort of looks at these issues prior to any potential litigation.

Mr. Hooser: This federal agency the one making the complaint or are these complaints made by people and the federal agency is presenting the complaints? How does that work?

Mr. Jung: Individuals file charges and it gets processed through the EEOC. Then the EEOC will do an investigation.

Mr. Hooser: What is on the agenda is reviewing that investigation?

Mr. Jung: Reviewing the actual investigation for these particular matters and then possible resolution.

Mr. Hooser: Okay. Thank you.

Chair Furfaro: Mr. Kagawa, you have the floor.

Mr. Kagawa: Thank you. I am just going to discuss some of the things that were out in the media and I just want to confirm if that is true. So, Sergeant Abbatiello filed a complaint? Is that what stirred this up?

Mr. Jung: And just...these do deal with confidential personnel matters and we, just like the EEOC, are held to confidentiality requirements under federal law, so we can neither confirm nor deny the names of individuals.

Mr. Kagawa: So, the media can print it in the paper, but we cannot say it here on the Council floor?

Mr. Jung: I know it sounds difficult, but the problem is that we do not know how the media got that information because it is still considered confidential.

Mr. Kagawa: Okay, I will not name a name, but as a result of the complaint being filed by an officer of our Kaua'i Police Department, two (2) high ranking officers have been on paid administrative leave for over eighteen (18) months, is that true?

Mr. Jung: I think we are going to have to discuss these matters in Executive Session because they do deal with issues relative to medical concerns as well as personnel matters.

Mr. Kagawa: Again, the media knows this and prints this and I want to confirm if the media is accurate or not and we cannot. Basically, whatever they print is who knows whether it is true or not because we cannot tell the public that there is a problem that has been filed against the taxpayers or the governing body running the taxpayer and we cannot just confirm or deny this? I mean because it seem wrong for me because the public would want to know, how can these high paid, high ranking officers not have to work, get paid, and what are

the reasons why the public is paying their salaries. I do not know...I am just trying to figure out what can we...can we confirm or deny what is being printed in the paper?

Mr. Jung: At this point we cannot. Unfortunately the County is put at a disadvantage when these types of things get leaked to the media.

Mr. Kagawa: So when can we...at what stage would we be able to, I guess answer these questions that I have that basically has been printed and I am just asking whether it is true or false?

Mr. Jung: Again, we are bound by federal law to keep these matters confidential and in terms of stages of when we can release this information, it all depends on the outcome of the EEOC process.

Mr. Kagawa: One (1) last question, so the EEOC charge has been filed, and the end result, are they asking for money?

Mr. Jung: Again, this information would have to be discussed in Executive Session.

Mr. Kagawa: Okay.

Chair Furfaro: Thank you for your explanation about federal law as it applies to us on EEOC, but we have other questions in this order JoAnn, Mr. Rapozo, and then Mr. Bynum. JoAnn.

Ms. Yukimura: Thank you. Good morning. I think you have already answered my questions, but I think it bears asking and repeating the answer. Based on federal law we cannot disclose the complainant or the person against whom any complaint has been filed at this point. These are personnel issues and under federal law are required to be kept private or un-public.

Mr. Jung: That is correct. The policy behind the federal law is that for complainants and then those who assist with any potential complaint. You want to keep these matters confidential to avoid any further potential retaliation on those people whose names are revealed.

Ms. Yukimura: Okay.

Mr. Jung: We can certainly provide you with the dissertation on confidentiality requirements of EEOC complaints and the reasons why these matters remain confidential.

Ms. Yukimura: Yes, okay. I know it is extremely frustrating both for us on the Council and for the public, but we did swear to abide by laws, federal, state and county laws. Thank you.

Chair Furfaro: On that note, I will just remind everyone as it comes to personnel matters there is a great degree at any level to be very cautious with exposing names on personnel matters. Mr. Rapozo, you have the floor.

Mr. Rapozo: Thank you, Mr. Chair. Thank you, Ian for being here. Are all parties involved bound by confidentiality?

Mr. Jung: That is a good question and a question that we are looking into right now, but I know as the employer, which is the County of Kaua'i and the Kaua'i Police Department, we are bound by it. Whether the charging party is bound by it, that is something we are taking a look at.

Mr. Rapozo: Well I guess my concern is like what Mr. Kagawa talked about where you have individuals that are basically leaking the information out to the media, to the blog, to the newspapers whether true or untrue, we do not know. I would hope that we would be making an effort to determine who those people are and take action against those, much like we have to abide by the laws so does every single employee of the County and I guess it is concerning how some of these facts that I, myself, on this body do not know. Myself and Councilmember Yukimura have asked for a briefing in this matter several months ago to your office and was outright denied by Mr. Guyot. Outright denied. "No, you cannot get this information. You are not entitled to information even in Executive Session...no, we cannot even tell you." That is very frustrating when I open up the newspaper or I open up the internet and I read some very detailed facts about what is going on and we on this body, at the end of the day needs to make the determination what we do with this case, cannot even get a response or an opportunity to ask question in Executive Session. I mean is that how it is? I mean is that...I understand to some extent some of these things are confidential to the general public but to this body? The final decision making authority to be told by the County Attorney's Office, "no, we are not going to give you that information." Is that fair?

Mr. Jung: Well unfortunately I do not know. I am being put on this sort of last minute so I am taking a look at all of these issues now.

Mr. Rapozo: Let me apologize upfront. Again, time and time again it is the County Attorney who is not here to answer and it is not the first time we have had a Deputy come up that was told either that morning or the day before, "Hey, show up at the Council meeting." That is just frustrating for me, but we as the Council should have the authority to discuss these things before it gets to this point and we are never given the opportunity and Councilmember Yukimura will attest to that because she as well as myself were involved in E-mails to your office, and again, it was not from Ian, it was not from you, Mr. Jung so I just do not know. There is no one else here to talk to. No one is here to ask.

Mr. Jung: I think that is why I am here now to try to explain the process to you folks in Executive Session and where we are in the current process.

Mr. Rapozo: But I guess, you know, in the spirit of transparency I think the public that is watching this, I want them to know that this Council has made an attempt to get the information...I do not know...how many months ago? It had to be three (3) or four (4) months ago. It was a while ago and to be told, "Sorry", I think that is appalling. I think that is irresponsible because now we have six (6) charges that...and again we do not have the information. The public obviously...but I wanted the public to know that it is not because we have not tried. It was an opportunity to get a briefing and we were denied that, and I just do not think that is proper. Maybe you can take that back to your boss, but something is seriously...this I think should warrant the County Attorney here at the Council meeting especially if...or Guyot or whoever is in charge of this, because it is

frustrating. The other thing is EEOC determination, are they final? I mean they do the investigation and they come out with a report, right?

Mr. Jung: That is correct. They come out...

Mr. Rapozo: And I am not talking about this case I am just talking in general.

Mr. Jung: If we are talking in general there is...

Mr. Rapozo: Yes, I am talking about in general. So let us say I have a problem with the Chair, and he called me a racial slur or someone around here. So I file with the EEOC. They do an investigation. They come back with a report that says the investigation finds that there is reason to believe that Mr. Furfaro called Mel a racial slur, correct?

Mr. Jung: Correct.

Mr. Rapozo: And that basically is the right for now where I can actually sue?

Mr. Jung: Well, there is a process intermediary before the lawsuit, where it is called conciliation where you can discuss per a settlement prior to going into litigation.

Mr. Rapozo: Right. That is if I am willing to settle?

Mr. Jung: If there is what is being referred to as reasonable cause for a determination of either discrimination or retaliation.

Mr. Rapozo: Correct. But Mr. Furfaro as the...and again this is all hypothetical, I just want to paint a picture so I can understand the process better. Mr. Furfaro as the person that allegations were made against does not have an opportunity to rebut the investigation?

Mr. Jung: That is not correct. He would.

Mr. Rapozo: No, I am asking.

Mr. Jung: The individuals who are investigated do have an opportunity to be investigated and interviewed.

Mr. Rapozo: And now the EEOC comes out with a determination of whatever, reasonable cause but that is not the end of the road, right? The lawsuit could still ensue?

Mr. Jung: That is correct.

Mr. Rapozo: And who is determining that? Who makes that call whether or not it goes to...is the conciliation process required/mandatory?

Mr. Jung: It is a voluntary process, but it goes to looking at pre-settlement before lawsuits are filed. So once the lawsuits are filed then you go into discovery mode.

Mr. Rapozo: So the stage we are in right now, is that the conciliation process? Am I saying that right? Conciliation.

Mr. Jung: Again, I cannot confirm or deny where we are in the process in these particular cases, but that after letters of determination are issued the next step is conciliation. If conciliation fails, then you go to litigation.

Mr. Rapozo: Okay, and then my only other question is as we go into Executive Session, I may ask that the Chief be present as a resource person, for some questions that I may have. Is that possible?

Mr. Jung: You can pose that question to me in Executive Session.

Mr. Rapozo: Well, I want to make sure that we...because I believe that I may, after reading some of these things I may have some questions and I want to make sure that we have him on notice if in fact...I mean we have had resources here in the past. We have discussed claims with Public Works, against Public Works. We have had an engineer come in and explain, so I am just asking for that same courtesy that if in fact we come across some questions, and I do, having just read the report, the summary, that I may have questions of the Chief and that I would ask that he be made available, at least be notified that he may be called in as a resource person.

Mr. Jung: We can certainly look into it.

Mr. Rapozo: Thank you. That is all I have, Mr. Chair.

Chair Furfaro: So why do you not prepare to look into it when we get into Executive Session. In the meantime, I would let staff alert him that in fact, he may be on call.

Mr. Rapozo: Thank you, Mr. Chair.

Chair Furfaro: Mr. Bynum and I will go to myself after that.

Mr. Bynum: I will try to be brief. Is the Hawai'i Civil Rights Commission the same as the EEOC?

Mr. Jung: No, it is not. The Hawai'i Civil Rights Commission is a separate agency. It is a state agency that looks into state law issues, but if an investigation is taken over by EEOC then the Hawai'i Civil Rights Commission usually lets the EEOC take charge on it, the federal agency that is.

Mr. Bynum: Okay, and because these are police matters and involve personnel, would it not, to a point, be handled by the Police Commission? I am asking where is the trigger that makes this the body's? My impression is that police, fire, personnel those issues do not come to this body prior to there being some legal involvement. That they get handled by those at the department level, then the commission. So what is the trigger that moves this to become this body's responsibility? Is it the filing of these EEOC determinations?

Mr. Jung: Well the Police Commission looks at citizen complaints against particular officers. When you have personnel matters then those are administrative matters, but we get to the situation if there is a settlement then the Council gets involved if there is any demand for a monetary relief.

Mr. Bynum: And are we at this point now?

Mr. Jung: Again, unfortunately we are stuck in this situation here.

Mr. Bynum: That is fine. I do not want you to...I am not trying to...oh, last question, the EEOC has done something. Have they generated documents regarding this case that are public? Are there public documents from that commission?

Mr. Jung: As for my discussion with the EEOC the documents that they provide are still, and remain confidential.

Mr. Bynum: At least the fact that they have done something is public. How was that announced?

Mr. Jung: There are exceptions to Uniform Information Practices Act (UIPA) request when it comes to conciliation issues and EEOC issues.

Mr. Bynum: So there are no documents that the public could...

Mr. Jung: For example, if you call the EEOC and say, "Is there a charge on this particular matter?" They will say that we can neither confirm nor deny.

Mr. Bynum: Okay, thank you.

Chair Furfaro: Okay, are there anymore questions?  
Mr. Hooser.

Mr. Hooser: Thank you, Chair. It is a complicated matter and we are having this discussion in a box and we cannot talk about everything and that is why I am kind of restating, so I can understand it better and the public will also understand it better. The charges or allegations or whatever contained in those five (5) numbers that you read earlier, to be clear, we are arguing with, or discussing with, and negotiating with the EEOC or with the individuals? Is our debate or our discussion with the federal agency who is making or supporting these claims, or is it with the individuals?

Mr. Jung: The discussion would be with both the EEOC as well as the individuals.

Mr. Hooser: Okay, but the EEOC has made a determination? Have they looked at the matter and come to a conclusion, how they feel about the allegations? If you would, whether they are founded or unfounded.



Mr. Jung: Unfortunately, I again, we cannot discuss the actual issues in these particular matter, but in general, if there are letters of determination, that is when the EEOC would say there has been cause for discrimination or retaliation.

Mr. Hooser: Okay. And these matters...can we talk about what they stem from, issues that happened this year or last year or the year before? Some context in terms of when this alleged activity occurred.

Mr. Jung: Unfortunately, no because they are contained in certain complaints, but we can discuss this again in Executive Session.

Mr. Hooser: Okay, and further to Councilmember Bynum's mentioning of the Police Commission, I think it is a very valid question as to where they are in this process. That they are responsible for hiring and firing the Police Chief. Is that correct?

Mr. Jung: That is correct, but as you know, that matter is also being litigated in terms of what certain roles are between the Police Commission and the Administration, which is up on appeal before the Intermediate Court of Appeals.

Mr. Hooser: So has this item been referred to the Police Commission at all?

Mr. Jung: The Police Commission is aware of certain issues regarding these matters.

Mr. Hooser: Okay. Thank you. Thank you, Chair.

Chair Furfaro: I have a couple of questions, some along the line of what had already been asked, but as an employer that has gone through EEOC complaints there is a relatively low threshold on some of these complaints, possibly?

Mr. Jung: What do you mean by threshold, Chair?

Chair Furfaro: For example, no action was taken as far as reprimand, suspension, and so forth, but might have been a violation of a policy or something that just required a written warning?

Mr. Jung: Again, we would have to explore those facts in Executive Session.

Chair Furfaro: Okay, fine. Do I also assume at this point before the EEOC actually files the charges that both sides have been investigated for their conclusion?

Mr. Jung: Have both sides...

Chair Furfaro: Have both sides of the complaint had an opportunity to be investigated before they arrived at their conclusion that there is a claim.

Mr. Jung: Again, the details of how the investigation occurred would probably be matters...

Chair Furfaro: Could you answer at least the fact that what you are going to be briefing us on these six (6) case matters, we cannot be assured that everybody has had their opportunity to respond to EEOC.

Mr. Jung: If they had an opportunity?

Chair Furfaro: Yes.

Mr. Jung: As far as I am concerned, in looking and it is up to the EEOC to conduct their own investigation, but opportunities have been given.

Chair Furfaro: Okay. That answers my question. Yes.  
Mr. Kagawa?

Mr. Kagawa: One final question. Can we...is the County Attorney able to check with the Garden Island and Kauai Eclectic and find out who told them...I mean if we cannot ask the question, but they know the facts and they are printing it in the paper then I mean who is telling them? So I do not know if that question can go out.

Mr. Jung: I will answer that question. Once the matter did get revealed, I personally called the Star Advertiser's writer to solicit who disclosed this information and I was informed that it was a confidential source.

Chair Furfaro: But you did make the query yourself?

Mr. Jung: I did make the query myself, yes.

Mr. Kagawa: Yes. I just wanted to make sure that we are taking those steps. If we are saying that nobody should be talking about it and nobody should know, then at least find out if somebody can tell us who is leaking it.

Chair Furfaro: But it is assumed that all parties involved would understand to some degree they are bound to the same kind of confidentiality that we are?

Mr. Jung: I know as the employer we are bound. How it applies to Charging Parties, if they reveal information, we are exploring that issue right now to try and look at...

Chair Furfaro: You are exploring that?

Mr. Jung: Yes.

Chair Furfaro: Okay. On that note, I have a motion to move into Executive Session?

Mr. Rapozo moved to convene in Executive Session for ES-735, seconded by Ms. Yukimura, and carried by the following vote:

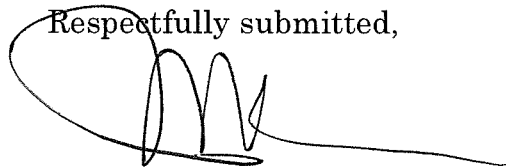
FOR EXECUTIVE SESSION:	Bynum, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Chock	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: On that note in five (5) minutes let us be in the chambers. BC, we are going to close up shop for right now. We are going in Executive Session. Thank you very much.

ADJOURNMENT:

There being no further business, the Special Council Meeting adjourned at 10:58 a.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA  
Deputy County Clerk

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